

**ENTERED**

January 04, 2022

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

QUIRINO TORRES,

Plaintiff,

VS.

ALDENE SOUTHMAYD III, *et al.*,

Defendants.

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CIVIL ACTION NO. 2:21-CV-37

**ORDER ADOPTING MEMORANDUM & RECOMMENDATION**


Before the Court is Magistrate Judge Jason Libby's Memorandum and Recommendation (M&R). (D.E. 36). The M&R recommends that the Court deny Defendants' motion to dismiss (D.E. 24), treated as a motion for summary judgment, because Defendants have not shown by sufficient evidence that Plaintiff failed to exhaust his administrative remedies. The M&R further recommends that the Court deny as moot Plaintiff's motion to quash the motion to dismiss. (D.E. 36; D.E. 26).

The parties were provided proper notice of, and the opportunity to object to, the Magistrate Judge's M&R. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b); General Order No. 2002-13. No objection has been filed. When no timely objection has been filed, the district court need only determine whether the Magistrate Judge's M&R is clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989) (per curiam); *Powell v. Litton Loan Servicing, LP*, No. CIV. A. H-14-2700, 2015 WL 3823141, at \*1 (S.D. Tex. June 18, 2015).

Having carefully reviewed the proposed findings and conclusions of the Magistrate

Judge, the filings of the parties, the record, and the applicable law, and finding that the M&R is not clearly erroneous or contrary to law, the Court **ADOPTS** the M&R in its entirety. (D.E. 36). Accordingly, the Court **DENIES** Defendants' motion to dismiss, treated as a motion for summary judgment. (D.E. 24). The Court **DENIES** as moot Plaintiff's motion to quash. (D.E. 26).

SO ORDERED.

  
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DAVID S. MORALES  
UNITED STATES DISTRICT JUDGE

Dated: Corpus Christi, Texas  
January 3<sup>rd</sup>, 2022